

# **Minnesota Asset Transfer Limit §1115 Waiver Request**

---

**Submitted by:  
The Minnesota Department of Human Services  
March 2003**



# Minnesota Asset Transfer Limit §1115 Waiver

## TABLE OF CONTENTS

Section One	Introduction .....	1
1.1	Minnesota’s Phase 2 Waiver Request .....	1
1.2	CMS Response .....	2
1.3	Current Waiver Request.....	3
Section Two	Demonstration Design .....	5
2.1	Overall Proposal .....	5
2.2	Specific Waiver Components .....	5
2.21	Transfer of Excluded Assets Prohibited .....	5
2.22	Complete Ineligibility for MA .....	6
2.23	72-Month Look-Back .....	6
2.24	Penalty Period Beginning .....	7
2.25	Penalty Period Divisor .....	7
2.26	Permissible Homestead Transfers to Relatives .....	8
2.27	Medical Assistance Recipient Transfers to Spouses.....	8
2.28	Transfers to Trusts .....	9
2.29	Permissible Purposes of a Trust.....	10
Section Three	Organization and Administration .....	11
3.1	Organizational Structure .....	11
3.11	Organizational Structure of the Minnesota Department of Human Services	11
3.12	Key Personnel of the Demonstration .....	11
3.2	Administration of the Demonstration .....	12
3.21	Medical Assistance Eligibility .....	12
3.22	MinnesotaCare Eligibility.....	12
3.3	Public and Stakeholder Involvement .....	12
Section Four	Evaluation .....	13
4.1	Demonstration Objective .....	13
4.2	Hypotheses Regarding Further Limitations to Asset Sheltering Techniques .....	13

Section Five	Caseload and Cost Estimates .....	15
5.1	With Waiver: Long Term Care Asset Transfer Changes.....	15
5.2	Caseload and Cost Estimates for Long Term Care Asset Transfer Changes.....	17
5.21	Caseload Estimates .....	17
5.22	Cost Estimates.....	18

## **Section Six**

# Waivers Requested .....19

Attachment 1:     *State Register* Notice

# Asset Transfer Limit Demonstration

---

## Section One - Introduction

§1917(c)(1) of the Social Security Act requires that a transfer of non-excluded assets or the homestead for less than fair market value within a 36-month look-back period prior to a person's request for Medical Assistance (MA) while receiving long term care services results in a penalty for MA payment of long term care services for a calculated period of time. In October 1993, Minnesota submitted a request for a waiver of §1917(c)(1) to CMS (then HCFA). The request was subsequently denied. CMS noted that waivers of this provision to permit requirements that are more restrictive than current transfer of assets policies, as requested by Minnesota, had not been granted previously.

### 1.1 Minnesota's Phase 2 Waiver Request

As part of the Phase 2 MinnesotaCare HealthCare Reform Waiver, which was submitted to CMS in 1997, Minnesota again requested this waiver, along with several others related to asset transfers, including:

**Transfer of Excluded Assets Prohibited** Current transfer prohibitions affect only the transfer of homesteads and non-excluded assets. Minnesota proposed to apply prohibitions to the transfer of all assets including excluded assets.

**Complete Ineligibility for Medical Assistance** Currently, prohibited transfers result only in the non-payment of Medicaid for long term care services (including institutional and home and community-based waiver services) for a calculated period. The State proposed that prohibited transfer penalties would result in complete ineligibility for MA for a calculated period, rather than ineligibility solely for long-term care services.

**72-Month Look-Back.** Transfers of assets for less than fair market value are subject to a look back period of 36 months for most transfers and 60 months for certain transfers into trusts. The State proposed that all transfers for less than fair market value would be subject to a 72-month look-back period.

**Penalty Period Beginning** The penalty of non-payment for long-term care services begins generally in the month the assets are transferred. The State proposed that the transfer penalty period for applicants would begin at the beginning of the month a person applies for MA and is otherwise eligible, or when the county agency becomes aware of the transfer, whichever is later. The transfer penalty period for recipients would begin at the beginning of the month the county agency becomes aware of the transfer or the month following a period of ineligibility existing when the transfer was made.

# Asset Transfer Limit Demonstration

---

**Penalty Period Divisor** The divisor currently used to calculate a penalty period is the statewide average nursing facility payment rate. The State proposed instead using the statewide average nursing facility payment made by MA as the divisor. This figure takes into consideration the income that would otherwise be applied to cost of care in the post-eligibility process.

**Permissible Homestead Transfers to Relatives** Transfers of homesteads for less than fair market value to specified relatives (adult children who provided physician certified care for person for at least two years in the person's home that kept him or her out of a long term care facility, spouses, siblings, minor children, or disabled children) currently are permitted without regard to whether the relative is in need of housing or resides in the homestead at the time of transfer. The State's proposal would have permitted such transfers only to specified relatives who were living in the homestead at the time of the transfer and who provided physician certified care in the person's home that prevented the person from entering a long term care facility for at least two years.

**Medical Assistance Recipient Transfers to Spouses** Under current law, transfers for less than fair market value are permitted to or on the sole behalf of spouses of clients without further limitation. The State would have limited such transfers only to an amount allowed under spousal impoverishment asset provisions.

**Transfers to Trusts** Transfers for less than fair market value are permitted to trusts for the sole benefit of children disabled according to SSI criteria without a requirement that the trust principal revert to the State after the disabled child's death to repay any MA payments made. The State proposed limiting such transfers to trusts that revert to the State after the death of the disabled child.

In addition, transfers for less than fair market value are permitted to trusts for the sole benefit of people under age 65 who are disabled according to SSI criteria. Minnesota proposed prohibiting transfers to trusts for people with a disability who are under age 65 and who are not the children of the transferor without penalty.

## 1.2 CMS Response

In October, 1997, CMS responded to the waiver request with a set of questions and comments regarding various components of the request. Minnesota submitted an amended draft waiver request in June, 1998, which included the following response to CMS's comment:

Shortly after Minnesota's 1993 asset transfer waiver request, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) with new restrictions on asset transfers. Given the timing of Minnesota's request, it was understandable that CMS wanted to require the State to work within newly enacted congressional restrictions for a period of time, rather than to permit a diversity of approaches under §1115. However,

## **Asset Transfer Limit Demonstration**

---

because there has been an increase in the phenomenon of Medicaid estate planning in the 4 years that since OBRA 1993 was enacted, it is appropriate to permit Minnesota the opportunity to demonstrate alternative approaches.

Nevertheless, in August 2000, the entire set of asset transfer provisions was denied, although other components of the Phase 2 waiver request were approved.

### **1.3 Current Waiver Request**

In the years since these previous waiver requests were made, the practice of “Medicaid estate planning” has become even more prevalent. At the same time, rapidly increasing Medicaid expenditures, state budget deficits, and federal budget concerns make it even more imperative that these dwindling resources be dedicated to those citizens most in need of access to health care. The Minnesota legislature has directed the Department of Human Services to again request waivers of §1902(a)(18) of the Act necessary to allow the State to avoid incurring costs of providing long-term care for persons who improperly transfer assets in order to achieve eligibility for Medicaid services.



# **Asset Transfer Limit Demonstration**

---

# Asset Transfer Limit Demonstration

---

## Section Two - Demonstration Design

Minnesota's Governor has proposed to the 2003 Minnesota legislature that it require the DHS to seek federal waivers necessary to make provisions governing the transfer of assets for less than fair market value more restrictive than currently permitted under Medicaid law.

### 2.1 Overall Proposal

**Current statute.** §1917(c)(1) of the Act requires that a transfer of non-excluded assets or the homestead for less than fair market value, within a 36-month look back period (60 months for certain transfers involving trusts) prior to a person's request for MA while receiving long term care services, results in a penalty for MA payment of long term care services for a calculated period of time. §1917(c)(2) sets out exceptions to this requirement for certain asset transfers to specified relatives, including spouses, minor and disabled sons and daughters and other disabled people under age 65.

**Rationale.** The purposeful divestment of assets by individuals to achieve MA eligibility within the parameters of existing law has resulted in dramatic increases in MA spending for long term care services, the area of the greatest expenditure in the MA program. Moreover, there is an increasing awareness that Medicare seldom covers the cost of long term care, along with a growth in the elder law industry, which has lead to continuous growth in the practice of Medicaid estate planning. Stricter rules governing the transfer of assets for less than fair market value will discourage and deter voluntary impoverishment or, alternatively, result in payment penalties for these activities, thereby reducing MA expenditures. Further, the results of the project will provide useful information to policy makers at the state and national level regarding the prevalence and cost of Medicaid estate planning activities, an issue of national importance in planning for health care reform.

### 2.2 Specific Waiver Components

#### 2.21 Transfer of Excluded Assets Prohibited

- **Current provision.** Transfer prohibitions affect only the transfer of homesteads and non-excluded assets.
- **Proposed modification.** Transfer prohibitions would affect the transfer of all assets including excluded assets.
- **Rationale.** Transfers of excluded assets, such as vehicles and valuable jewelry, currently made with impunity due to the existing loophole, will be deterred or be subject to a penalty and thereby result in savings of MA dollars.

# Asset Transfer Limit Demonstration

---

- **Effective date.** Effective for transfers made on or after July 1, 2003.

## 2.22 Complete Ineligibility for MA

- **Current provision.** Prohibited transfers result only in the non-payment of Medicaid for long term care services (including institutional and home and community-based waiver services) for a calculated period. A Medicaid option, not selected by Minnesota, would also penalize the payment of non-institutional long-term care services.
- **Proposed modification.** Prohibit uncompensated transfers of assets and apply penalty periods for all MA services for a calculated period, rather than limit ineligibility solely to long-term care services.
- **Rationale.** Penalizing the transfer of assets by complete MA eligibility would cut back on costly health care that, because it does not constitute long-term care, can currently be obtained without regard to transfer penalties, e.g. transplants and other high-cost acute care services. This penalty would also make it more difficult for individuals to deliberately conduct Medicaid estate planning, because of the uncertainty of the total amount of medical expenses that will be incurred. Fewer individuals may be willing to risk payment of all MA expenses than would risk long-term care expenses only.
- **Effective date.** Effective for transfers made on or after July 1, 2003.

## 2.23 72-Month Look-Back

- **Current provision.** Transfers of assets for less than fair market value are subject to a look back period of 36 months for most transfers and 60 months for certain transfers into trusts.
- **Proposed modification.** All transfers for less than fair market value would be subject to a 72-month look-back period.
- **Rationale.** A look-back period extended an additional three years will deter, or alternatively, subject to a penalty, more transfers for less than fair market value and thereby result in savings of MA dollars. A look-back period that is in closer proximity to people's productive earning years will mean that more assets are still in their possession at a time when they can better focus their health care planning on alternative payment sources, such as long term care insurance.
- **Effective date.** Effective for transfers made on or after July 1, 2003.

# Asset Transfer Limit Demonstration

---

## 2.24 Penalty Period Beginning

- **Current provision.** The penalty of non-payment for long-term care services begins generally in the month the assets are transferred.
- **Proposed modification.** The transfer penalty period for applicants would begin at the beginning of the month a person applies for MA and is otherwise eligible, or when the county agency becomes aware of the transfer, whichever is later. The transfer penalty period for recipients would begin at the beginning of the month the county agency becomes aware of the transfer or the month following a period of ineligibility existing when the transfer was made.
- **Rationale.** The proposal closes the loophole typically used by Medicaid estate planners, which allows a person to give away assets for less than fair market value, calculate the number of months of penalty, and then keep only that much more in assets to pay for care for that period. Had the assets not been transferred, that much more would have been available to the individual to pay for costly health care costs at the time of MA application. Removing this loophole makes it more likely that estate planning was done for purposes other than receiving MA.
- **Effective date.** Effective for applications made on or after July 1, 2003.

## 2.25 Penalty Period Divisor

- **Current provision.** The divisor used to calculate a penalty period is the statewide average nursing facility payment rate.
- **Proposed modification.** The divisor used to calculate a penalty period would be the statewide average nursing facility payment made by MA. This figure takes into consideration the income that would otherwise be applied to cost of care in the post-eligibility process.
- **Rationale.** The proposed change would result in slightly longer penalty periods when the value of the transfer is divided by the smaller payment figure. It still represents an average figure, yet realistically takes into consideration the available income of long term care residents and the typical MA payment made to a long term care facility.
- **Effective date.** Effective for applications made on or after July 1, 2003.

## 2.26 Permissible Homestead Transfers to Relatives

## Asset Transfer Limit Demonstration

---

- **Current provision.** Transfers of homesteads for less than fair market value are permitted to specified relatives (adult children who provided physician certified care for person for at least two years in the person's home that kept him or her out of a Long term care facility, spouses, siblings, minor children, or disabled children) are permitted without regard to whether the relative is in need of housing or resides in the homestead at the time of transfer.
- **Proposed modification.** Prohibit the transfer of the institutionalized person's interest in a homestead even to specified relatives, but allow the homestead to retain excluded status as long as the specified relative continued to reside in the homestead.
- **Rationale.** Prohibiting transfer of a homestead but maintaining the exclusion while a relative lives in the home would save MA dollars while recognizing the transferee's need for housing. Linking the treatment of the homestead more closely to the transferee's need for the housing recognizes the need for more cost savings, while also retaining the congressional notion of rewarding certain "worthy" relatives. In addition, linking the two more closely parallels the estate recovery provisions of the Act at §1917(b), which prohibit MA estate recovery against the same group of relatives only if they are residing in the homestead at the time of probate. Parallel provisions will reduce confusion for recipients and result in less error in administering the program.
- **Effective date.** Effective for transfers made on or after July 1, 2003.

### 2.27 Medical Assistance Recipient Transfers to Spouses

- **Current provision.** Transfers for less than fair market value are permitted to or for the sole benefit of spouses of clients without further limitation.
- **Proposed modification.** Transfers to spouses for less than fair market value after MA eligibility is established would be permitted only to an amount allowed under spousal impoverishment asset provisions.
- **Rationale.** This provision has allowed divestiture of assets after eligibility for long-term care has been established. The provision permits assets acquired by, or that become available to, the long-term care spouse, or assets shared with the community spouse that become available to both spouses, to be transferred to or for the sole benefit of the community spouse. Such transfers are permitted without regard to the asset allocation to the community spouse and without being subject to any restrictions or requirements that benefit the long-term care spouse. Closing this significant loophole would result in significant MA savings. Provisions designed to prevent spousal impoverishment would

## Asset Transfer Limit Demonstration

---

remain, but assets acquired by or made available to the institutionalized recipient after MA eligibility is achieved would, properly, first be spent on his or her long term care costs.

- **Effective date.** Effective for transfers made on or after July 1, 2003.

### 2.28 Transfers to Trusts

- **(a) Current provision.** Transfers for less than fair market value are permitted to trusts for the sole benefit of children disabled according to SSI criteria without a requirement that the trust principal revert to the State after the disabled child's death to repay any MA payments made.
- **Proposed modification.** Permissible transfers of other assets to a disabled child would be limited to transfers into a trust for the child's sole benefit that reverts to the State after the death of the disabled child, to recover MA payments made on behalf of either the grantor or the beneficiary of the trust, or both.
- **Rationale.** To limit MA expenditures, and for consistency with the Act's provisions on trusts as available assets in §1917(d), permissible transfers into trusts for a person's disabled child should contain a provision that the trust funds remaining after death of the disabled beneficiary should revert to the State to repay any MA paid on behalf of the disabled child or the transferor.
- **(b) Current provision.** Transfers for less than fair market value are permitted to trusts for the sole benefit of people under age 65 who are disabled according to SSI criteria.
- **Proposed modification.** Transfers to trusts for people with a disability who are under age 65 and who are not the children, adopted children, or legal wards of the transferor would no longer be permitted without penalty.
- **Rationale.** Steps should be taken to assure that the costs of long term care are covered before allowing the transfer of assets to a person for whom there is no financial obligation. Disallowing this type of trust would achieve MA savings.
- **Effective date.** Effective for transfers made on or after July 1, 2003.

### 2.29 Permissible Purposes of a Trust

- **Current provision.** Current law shelters assets placed in trust without regard to the purpose for which the trust is established.

## Asset Transfer Limit Demonstration

---

- **Proposed modification.** The State would have discretion to designate some trust purposes as invalid under §1917 (c) or (d). For example, transfers to trusts established for the care of a pet would not be considered a valid trust purpose for application of these sections.
- **Rationale.** Steps should be taken to assure that the costs of long term care are covered before allowing the transfer of assets for inappropriate purposes such as care for a pet. Disallowing this type of trust would achieve MA savings by foreclosing potential new loopholes for asset divestment.
- **Effective date.** Effective for transfers made on or after July 1, 2003.

# Asset Transfer Limit Demonstration

---

## Section Three - Organization and Administration

### 3.1 Organizational Structure

#### 3.11 Organizational Structure of Minnesota Department of Human Services

The Minnesota Department of Human Services (DHS) is the state Medicaid agency responsible for purchasing health services through fee-for-service and prepaid, capitated models for over 600,000 Medical Assistance (MA), General Assistance Medical Care (GAMC), and MinnesotaCare enrollees. DHS' Health Care Administration supervises eligibility administration of MA and GAMC at the county level, administers the MinnesotaCare Program at the state level, purchases covered services, and provides for performance measurements and quality improvement of health care administration and service delivery for program enrollees.

#### 3.12 Key Personnel of the Demonstration

**Kevin Goodno** is the Commissioner of Human Services and is responsible for directing the activities of the Department, which include the publicly funded health care programs.

**Wes Kooistra** is the Deputy Commissioner of Human Services.

**Mary Kennedy** serves as State Medicaid Director.

**Brian Osberg**, Assistant Commissioner of Health Care Administration, is responsible for administration of eligibility for health care programs and management of acute care benefits.

**Loren Colman**, Assistant Commissioner of Continuing Care, is responsible for administration of long-term care benefits.

**Sandy Burge** is responsible for contract negotiations, tribal relations and new waiver initiatives.

**Kathleen Vanderwall** serves as the primary contact for this waiver request.

**Ann Berg** is the manager of federal Centers for Medicare and Medicaid Services relations and federal Medicaid compliance.

**Kathleen Henry** is the Director of Health Care for Families with Children. This division is responsible for policy development and implementation related to eligibility for all MA, GAMC, and MinnesotaCare populations. The division supervises county administration of MA and GAMC eligibility and administers MinnesotaCare eligibility.



# Asset Transfer Limit Demonstration

---

## 3.2 Administration of the Demonstration

### 3.21 Medical Assistance Eligibility

MA Eligibility is supervised by DHS Health Care Administration and is administered by local county agencies.

### 3.22 MinnesotaCare Eligibility

MinnesotaCare eligibility is supervised by DHS Health Care Administration, and is administered by the Health Care Administration and, in some counties, by local county agencies.

## 3.3 Public and Stakeholder Involvement

The State will publish notice of its request for waivers to implement asset transfer changes in the *State Register* on Monday, March 24, 2003. The notice discusses the 30-day comment period, and explains how interested parties may receive copies of the waiver request or other information.

The *State Register* notice also notes that opportunity for public comment will be available when the Minnesota legislature takes up language to authorize the asset transfer changes at the state level. Interested parties who call DHS for information about the waiver request can also be updated as to the status of the bill and any scheduled legislative hearings.

A copy of the *State Register* notice is included with this request as Attachment 1.

# **Asset Transfer Limit Demonstration**

---

## **Section Four - Evaluation**

### **4.1 Demonstration Objective**

The objective of this demonstration is to discourage large transfers of wealth for the purpose of qualifying for Medicaid payment of long term care services. This section presents a plan for analysis of the effects of changing the timing of imposition of penalty periods, extending the look-back period from 36 to 72 months, and limiting permissible asset transfers.

### **4.2 Hypotheses Regarding Further Limitations to Asset Sheltering Techniques**

- Medical Assistance long-term care expenditures will grow at a slower rate.
- Tightening asset transfer policies will result in increased purchase of long term care insurance policies.

## **Asset Transfer Limit Demonstration**

---

# Asset Transfer Limit Demonstration

---

## Section Five - Caseload and Cost Estimates

### 5.1 With Waiver: Long Term Care Asset Transfer Changes

Federal law governs the treatment of assets and the penalties for uncompensated asset transfers as these issues affect MA eligibility for recipients of long term care(LTC) services. LTC services include nursing facility services, ICF services, nursing facility services in an acute care hospital, and all home and community-based waived services. This proposal would require Federal reform or a federal waiver allowing the state to implement the policy changes regarding MA eligibility of recipients of LTC services, which it would put into state law. The savings calculated in this analysis are contingent on federal approval to make the proposed changes.

Current federal law provides a penalty period for uncompensated asset transfers that occurred within 36 months of application for or receipt of MA payment for LTC services. The penalty period is determined by dividing the amount of the uncompensated transfer by the average monthly nursing facility per diem rate paid by MA: currently \$3,930. The maximum length of the penalty period is 36 months. During the penalty period, applicants are ineligible for MA payment of LTC costs but can be eligible for MA payment of other services.

Proposed changes in the treatment of asset are as follows:

- Penalty periods for uncompensated asset transfers would run their full calculated term, with no maximum length.
- The look-back period for uncompensated asset transfers would increased from 36 months to 72 months. This would be effective with transfers made on or after July 1, 2003. There would be no phase-in period.
- Transfers of excluded assets would also be penalized as uncompensated transfers. Such transfers are not penalized under current law.
- The penalty applied during penalty periods would be broadened to include all MA payments. Under current law the penalty applies only to payment of LTC services.
- Computation of the penalty period will be based on application date rather than the date the transfer was made.

The fiscal impact of the proposal was estimated based on data provided by the DHS Quality Initiative Division Long Term Care Study. The statewide projection is 627 cases annually with all transfers, with transferred assets averaging \$35,000 per case, for an aggregate value involved in such transfers of \$22 million per year.

## **Asset Transfer Limit Demonstration**

---

The nursing home caseload effect is calculated using an estimated distribution of transfer amounts and an estimated distribution of length of time in the nursing home and projecting the number of additional person-months of penalty that would occur in each fiscal year beginning with FY 2004.

The effect of extending the look-back period to 72 months is projected to begin in FY2004.

The effect of changing the effective date in the determination of the penalty period will affect each cohort of new applicants starting July 2003.

The MA nursing facility payment per day used to calculate the fiscal effects of these changes is equal to 40% of the projected charge per day for MA nursing facility residents. On average MA pays approximately 80% of the average charge, the balance of the cost being paid from the income of the recipients. Because the projected changes would affect applicants with the highest levels of assets, it is assumed that their income also would be twice the average for MA nursing facility residents.

The effect of penalizing transfers of excluded assets is projected to equal 10% of the caseload impact of LTC penalties, including the proposed changes.

The effect of extending the penalty to all MA services is projected at \$20 per NF day.

# Asset Transfer Limit Demonstration

## 5.2 Caseload and Cost Estimates for Asset Transfer Limit Changes

### 5.21 Caseload Estimates: Effects on average monthly number of Medical Assistance Nursing Facility recipients

**Making the first month of LTC eligibility the first month of the penalty period:**

	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
FY '04 cohort	(121)	(363)	(66)	(20)	(12)
FY '05 cohort		(121)	(363)	(66)	(20)
FY '06 cohort			(121)	(363)	(66)
FY '07 cohort				(121)	(363)
FY '08 cohort					(121)
Caseload Change	(121)	(484)	(550)	(570)	(582)

**Using the MA average payment per diem instead of the average rate as the divisor for calculating the penalty period, as added to making the first month of LTC eligibility the first month of the penalty period:**

	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
FY '04 cohort	(13)	(38)	(39)	(12)	(3)
FY '05 cohort		(13)	(38)	(39)	(12)
FY '06 cohort			(13)	(38)	(39)
FY '07 cohort				(13)	(38)
FY '08 cohort					(13)
Caseload Change	(13)	(51)	(90)	(102)	(105)

**Extending the look-back period from 36 months to 72 months is projected to increase the number of cases in LTC penalty status by 7.5% (2.5 percentage points for each year extended)**

Caseload Change	(16)	(63)	(71)	(73)	(74)
-----------------	------	------	------	------	------

**Not permitting transfers of excluded assets is projected to add 10% to the NF caseload impact**

## Asset Transfer Limit Demonstration

of transfer penalties, including the above changes:

Caseload Change	(15)	(60)	(71)	(75)	(76)
Total Caseload Effect	(165)	(658)	(782)	(820)	(837)

### 5.22 Cost Estimates

Effect on MA-paid NH days	(58,286)	(232,202)	(275,925)	(289,371)	(295,634)
Average MA payment per day @ twice average income	\$83.00	\$83.00	\$83.00	\$83.00	\$83.00
Effect on MA NF payments	(4,837,727)	(19,272,769)	(22,901,764)	(24,017,777)	(24,537,630)
Added effect to make person penalized ineligible for MA pmt of any service est. @ \$20/NF day	(1,165,717)	(4,644,041)	(5,518,497)	(5,787,416)	(5,912,682)
<b>Total MA effect</b>	(6,003,445)	(23,916,809)	(28,420,261)	(29,805,194)	(30,450,312)
<b>State Share</b>	(3,001,722)	(11,958,405)	(14,210,131)	(14,902,597)	(15,225,156)
<b>Federal Share</b>	(3,001,722)	(11,958,405)	(14,210,131)	(14,902,597)	(15,225,156)

# Asset Transfer Limit Demonstration

---

## Section Six - Waivers Requested

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(2) excludes transfers of certain assets from application of penalties.

The State request a waiver of this section to permit application of prohibitions to the transfer of all assets, including excluded assets.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(1)(B) requires that a transfer of non-excluded assets or the homestead for less than fair market value, within a 36-month look back period (60 months for certain transfers involving trusts) prior to a person's request for MA while receiving long term care services, results in a penalty for MA payment of long term care services for a calculated period of time.

The State request a waiver of this section to permit extension of the look-back period to 72 months.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(1)(C) requires that prohibited transfers of assets result in non-payment of Medicaid for long-term care services.

The State request a waiver of this section to permit prohibited transfer penalties to result in complete ineligibility for MA for the calculated period.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(1)(D) requires that the penalty of non-payment for long-term care services begins generally in the month the assets are transferred.

The State request a waiver of this section to permit delaying the start of the penalty period until the first day of the first month of eligibility for MA-paid long-term care services.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(1)(E) requires the divisor used to calculate a penalty period is the statewide average nursing facility payment rate.

The State request a waiver of this section to permit use of the statewide average nursing facility payment made by MA as the divisor.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(2)(A) permits transfers of homesteads for less than fair market value to specified relatives without regard to whether the relative is in need of housing or resides in the homestead at the



## Asset Transfer Limit Demonstration

---

time of transfer.

The State request a waiver of this section to permit such transfers only to specified relatives who were living in the homestead at the time of the transfer and who provided physician certified care in the person's home that prevented the person from entering a long term care facility for at least two years.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(2)(B)(i) and (ii) permits transfers for less than fair market value to or on the sole behalf of spouses of clients without further limitation.

The State request a waiver of this section to limit such transfers only to an amount allowed under spousal impoverishment asset provisions.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(c)(2)(B)(iii) and (iv) permits transfers for less than fair market value to trusts for the sole benefit of children disabled according to SSI criteria without a requirement that the trust principal revert to the State after the disabled child's death to repay any MA payments made. Transfers for less than fair market value are also permitted to trusts for the sole benefit of people under age 65 who are disabled according to SSI criteria.

The State request a waiver of this section to limit such transfers to trusts that revert to the State after the death of the disabled child, and to prohibit transfers to trusts for people with a disability who are under age 65 and who are not the children of the transferor without penalty.

- §1902(a)(18) of the Act insofar as it requires compliance with §1917(d)(2)(C) specifies that trusts may be established without regard to their purpose.

The State request a waiver of this section to permit discretion as to allowable purposes for a trust.

# Asset Transfer Limit Demonstration

---

**Attachment 1:**     *State Register* Notice - Request for Comments on Minnesota Asset Transfer Federal Waiver Request